

death penalty system. I have introduced the National Death Penalty Moratorium Act, which would place a moratorium on Federal executions and call on the States to do the same, while an independent, blue ribbon commission conducts a thorough study of the flaws in the system.

As public concern about the accuracy and fairness of the use of the death penalty deepens, I commend Governor Blagojevich for taking this opportunity to continue Illinois' commitment to justice and fairness.

Governor Blagojevich did the right thing last week when he decided to continue the death penalty moratorium in Illinois. We in the Senate have a unique opportunity to look to the State of Illinois as a model for the Nation in ensuring fairness in the Federal death penalty system. I urge my colleagues to co-sponsor the National Death Penalty Moratorium Act.

The time for a moratorium is now.

#### INTERPRETATION OF TITLE IX OF THE SARBANES-OXLEY ACT OF 2002, H.R. 3763

Mr. BIDEN. Mr. President, on April 11, 2003, I submitted for inclusion in the official RECORD of the Senate a section-by-section discussion and analysis of title IX of the Sarbanes-Oxley Act of 2002, P.L. 107-204. At the end of that statement, the full text of a letter to me from the United States Department of Justice, dated December 26, 2002, should have appeared. In that letter, Assistant Attorney General Daniel J. Bryant confirms my view that the Department may use existing criminal provisions to prosecute corporate executives who fail to file a certification attesting to the accuracy of a company's financial reports, pursuant to Section 906 of the Sarbanes-Oxley Act. Unfortunately, the letter was inadvertently excluded from the RECORD, so I now resubmit it and ask unanimous consent that its text be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF JUSTICE,  
OFFICE OF LEGISLATIVE AFFAIRS,  
Washington, DC, December 26, 2002.

Hon. JOSEPH R. BIDEN, Jr.,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR BIDEN: This is in response to your letter of October 16, 2002 to the Attorney General and the Chairman of the Securities and Exchange Commission regarding enforcement of section 906 of the Sarbanes-Oxley Act of 2002 ("the Act"). The Department thanks you for your leadership in corporate governance reform and, in particular, commends your efforts as primary author of section 906 of the Act (18 U.S.C. §1350), which requires corporate executives to make certain certifications with respect to their financial statements.

The Department is fully committed to using the tools Congress provided in the Act in our continuing efforts to uncover and punish corporate fraud. As the President noted when he signed the Act, "this law gives my administration new tools for enforcement. We will use them to the fullest." In keeping with the President's statement, Attorney

General Ashcroft has directed all United States Attorneys and FBI Special-Agents-in-Charge to review the Act and to take all appropriate steps to implement its provisions fully and expeditiously.

The Department continues to consult with the Commission staff regarding certain legal and technical issues associated with implementing section 906. In particular, questions have arisen regarding the form, location, method of filing and scope of the certification required under section 906. We want to assure you that the Department will continue to work closely with the Commission and we are confident that these questions will be resolved to your satisfaction and with the full input of all affected parties in the near future.

The Department does believe that it is in a position to respond to one question you raised in your letter. You have inquired whether covered individuals who willfully fail to file the certifications required by 18 U.S.C. §1350(a) are subject to the penalties provided in 15 U.S.C. §78ff. While the facts and circumstances determine which tools our prosecutors utilize in each individual case, we believe that section 78ff's criminal penalties are applicable when an individual willfully fails to file the required certification under section 906.

Section 1350(a) of the Act mandates that each periodic report containing financial statements filed by an issuer with the Securities and Exchange Commission pursuant to Sections 13(a) or 15(d) of the Securities Exchange Act of 1934 shall be accompanied by the required written certification. In addition, Section 3(d) of the Act states that: "a violation by any person of this Act, any rule or regulation of the Commission issued under this Act, or any rule of the Board shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 (15 U.S.C. §§78a et seq.) or the rules and regulations issued thereunder, consistent with the provisions of this Act, and any such person shall be subject to the same penalties, and to the same extent, as for a violation of that Act or such rules and regulations."

The criminal provisions of the Securities Exchange Act of 1934 (15 U.S.C. §78ff) state that "any person who willfully violates any provision of this chapter (other than section 78dd-1), or any rule or regulation thereunder the violation of which is made unlawful or the observance of which is required under the terms of this chapter . . . shall upon conviction be fined not more than \$1,000,000, or imprisoned not more than 10 years, or both." Therefore, as you have suggested, the Department may utilize section 78ff's criminal penalties to prosecute executives who violate the Sarbanes-Oxley Act by willfully failing to file section 906's required certifications.

The Department believes that it is critically important to work with the Commission to resolve the remaining issues you have raised in a timely and thoughtful manner, and we are committed to moving forward expeditiously to achieve consensus on those issues. We also will continue, where appropriate, to formulate guidance for our prosecutors and investigators who must enforce the new law and to provide clarity for the corporate community which must comply with it.

We appreciate your attention to these issues, and look forward to continuing to work with you and others in Congress on the implementation of the Sarbanes-Oxley Act.

Sincerely,

DANIEL J. BRYANT,  
Assistant Attorney General.

#### HONORING OUR ARMED FORCES

Mr. LIEBERMAN. Mr. President, I rise to pay tribute to the second fallen

son of Connecticut in the war against Saddam Hussein's regime in Iraq: Marine CPL Kemaphoom "Ahn" Chanawongse, 1st Battalion, 2nd Marine Regiment, 2nd Marine Expeditionary Brigade, United States Marine Corps, who was killed in an ambush outside of Nasiriyah, Iraq, on March 23rd, 2003. This brave young man was just 22 when he lost his life.

Corporal Chanawongse had been listed as missing in action for 3 weeks: three weeks of what I can only imagine was, for his family, a time of unimaginable uncertainty and trepidation. We can only hope that the news of their son's death has given the Corporal's family some sense of closure, and an opportunity to come to terms with his passing with God's help and the help of their friends.

Corporal Chanawongse was not the first to fall for his country in Iraq, and sadly, it is safe to say that his death will not be the last. Nonetheless it is important for us to honor each of the fallen in their own right: to say, "these few gave their lives so that many could live without fear." There is no greater measure of compassion than the sacrifice that Corporal Chanawongse and his fallen brothers- and sisters-in-arms made. In the stories of the fallen soldiers we will learn more about the stuff that this country is made of and the values on which it is built. It is our duty as Americans, and as citizens of the world who believe in freedom, to always remember their names, their faces, and their stories.

This young man and his family came to the United States when he was 8 years old, and they settled in the wonderful town of Waterford, CT. Ahn graduated from Waterford High School in 1999 and joined the Marines shortly thereafter. It is a story similar to the stories of countless other young men and women who choose to serve their country for the chance to be a part of something greater than themselves; for a chance to build a noble life for themselves and the children they might someday have; for a chance to join a select brotherhood and sisterhood that has, throughout history, responded to our country's call and the call of others in danger and distress around the world.

I extend my deepest condolences to Corporal Chanawongse's mother, Tan Patchem, his stepfather, Paul Patchem, and his older brother, Awe. I tell you plainly that I am humbled by your family's sacrifice, and I am honored to pay tribute to your son in this Chamber today.

Paul, Tan, and Awe, our prayers are with you in this difficult time.

#### TRIBUTE TO THE LATE SENATOR SPARK MATSUNAGA

Mr. INOUE. Mr. President, 13 years ago this month, our late colleague, the Honorable Spark Matsunaga of Hawaii, died while serving in office, abruptly cutting short a distinguished 28-year

career in the United States Senate and the House of Representatives.

His legacy should not be forgotten, particularly since in recent months, the war has dominated discussions in our Chamber and throughout the world. Sixty years ago, circumstances compelled Senator Matsunaga to become a warrior, and he acted with bravery and valor that resulted in our country awarding him the Bronze Star and two Purple Hearts. Even as a war hero, however, Senator Matsunaga knew the importance of peace and believed that the peaceful resolution of disputes should always be our primary goal.

"After serving as a soldier, he went into public service to find a way to end war," his son, former Hawaii State Senator Matt Matsunaga, once said.

Like other prominent Americans such as Woodrow Wilson, Jennings Randolph, and Everett Dirksen, Senator Matsunaga envisioned a "Department of Peace" that ideally would be on equal footing with the Department of Defense. In 1979, he was successful in having a provision added to an education appropriations bill that called for the establishment of the Commission on Proposals for the National Academy of Peace and Conflict Resolution.

Senator Matsunaga chaired the newly created nonpartisan panel, which became known as the Matsunaga Commission. After numerous public hearings and meetings with scholars, government, and military officials, and representatives from religious and ethnic organizations, the Commission recommended the creation of a national peace academy. Subsequently, Senator Matsunaga spearheaded a bipartisan drive that led to the passage of a bill that was signed into law by President Reagan establishing the United States Institute of Peace in Washington, D.C.

The Institute's mission is to "support the development, transmission, and use of knowledge to promote peace and curb violent international conflict."

Following Senator Matsunaga's death in 1990, the University of Hawaii paid tribute to him by establishing the Matsunaga Institute for Peace, where scholars could study and advise on ways to settle regional and international disputes without turning to violence.

Senator Matsunaga's belief in peace began early. In 1930, as a student at the University of Hawaii, he wrote a short essay, titled "Let Us Teach Our Children to Want Peace":

Wants are the drives of all human action. If we want peace we must educate people to want peace. We must replace attitudes favorable to war with attitudes opposed to war. Parents should protect the child from experiences with materials of warfare. Teachers should let the generals fall into the background and bring into the foreground leaders in social reform as heroes. We must help our young men to see that there are other types of bravery than that which is displayed on the battlefield. If in our teaching we empha-

size the life and work of our great contributors instead of our great destroyers, people will come to realize that moral courage is bravery of the highest type, and America will be called the Champion of Peace.

Senator Matsunaga lived by those words throughout his life. I ask my colleagues to join me in paying tribute to the late Senator Matsunaga.

#### THE DISTINGUISHED CAREER OF JAY CUTLER

Mr. KENNEDY. Mr. President, I welcome this opportunity to pay tribute to the distinguished career of Jay Cutler, who is retiring this year as the Director of Government Relations and Special Counsel for the American Psychiatric Association, where he has served for 25 years. During that quarter century he has been a powerful advocate for America's psychiatrists, for the patients they serve, and for the broader cause of mental health. He is well known to virtually every Senator as an outstanding advocate and a fine human being.

I first came to know Jay many years ago, when he served on what was then known as the Senate Human Resources Committee and is today our Health, Education, Labor and Pensions Committee. Jay was Senator Jacob Javits' top staff person on the committee. I worked closely with him on a wide range of issues, especially on health care.

Jay's career has had a remarkable breadth and depth. There is no cause in which he has been more deeply involved than better treatment for persons suffering from mental illness and substance abuse. Over the course of his career, there has been a remarkable shift in the perception of mental illness and substance abuse by policy makers and the public. The Nation has made a remarkable transition from the long held and destructive view that mental illness and substance abuse are character flaws, and has achieved a new understanding, that they are diseases which can and should receive the best treatment that medical science can provide. In many ways, Jay's tireless dedication to the cause of mental illness reform and substance abuse treatment has been at the core of this profound shift in public awareness and understanding of these disorders.

Among many other accomplishments during Jay's years in the Senate tenure, he had played the central staff role in the drafting, introduction and passage of the landmark Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, P.L. 91-616, that established the National Institute on Alcohol Abuse and Alcoholism. He worked side by side with Senator Javits and Senator Harold Hughes to change the perception of national policymakers towards alcoholism and the effects of alcohol abuse.

As a Senate aide and later as APA's Director of Government Relations, Jay

had a direct impact on virtually every major bill on health policy and mental illness and substance abuse treatment legislation over more than 30 years. Even a selective list of the policies and laws that bear Jay's imprint includes: the landmark Employee Retirement Income Security Act; expansion of the community mental health centers program; public oversight to protect patients in mental health treatment against abuse; reauthorization and reorganization of the Alcohol, Drug Abuse, and Mental Health Administration; the exemption of psychiatric hospitals and units from the Medicare prospective payment methodology, ensuring their fiscal viability for nearly 20 years; the expansion of Medicare's limited coverage of outpatient treatment for mental illness, first by lifting the \$250 annual dollar limit to \$500, then to \$1,200, and ultimately repealing the discriminatory dollar limit altogether; enactment of the landmark 1996 Federal Mental Health Parity Act; increased funding for veterans', children's, and Indian mental health services; medical records privacy legislation, especially assuring the confidentiality of medical records for psychiatric and substance abuse treatment.

The historic decision by President Clinton to issue an Executive Order requiring non-discriminatory coverage of treatment for mental illness, including alcohol and substance abuse disorders, in the Federal Employees' Health Benefits Program; the APA's successful efforts to enact "parity" laws in some 30 States; the bipartisan national campaign to double the NIH research budget, including the budgets on mental illness and substance abuse disorders.

For more than 30 years, Jay has dedicated his professional career to the eradication of any stigma against persons with mental illness, including those struggling with alcohol and substance abuse disorders. He has greatly assisted in educating the public and key national policymakers on these vital issues. He has also been at the forefront of efforts to eliminate discrimination against persons with mental illness. He has a record that few can match as an advocate for education, research, and treatment of all mental disorders.

Jay's personal qualities have not only contributed immeasurably to his success but have made him countless friends in the Senate, the House, administrations of both parties, and the health policy community. All his interactions are marked by an extraordinary degree of candor and openness and by the incisive intellect and political skill that has made him a valuable counselor to so many of us.

Jay has always fought hard and effectively for the interests of the physicians represented by the American Psychiatric Association. Jay's wisest counsel to the APA was to place the public policy needs of its patients first. To his enduring credit, throughout